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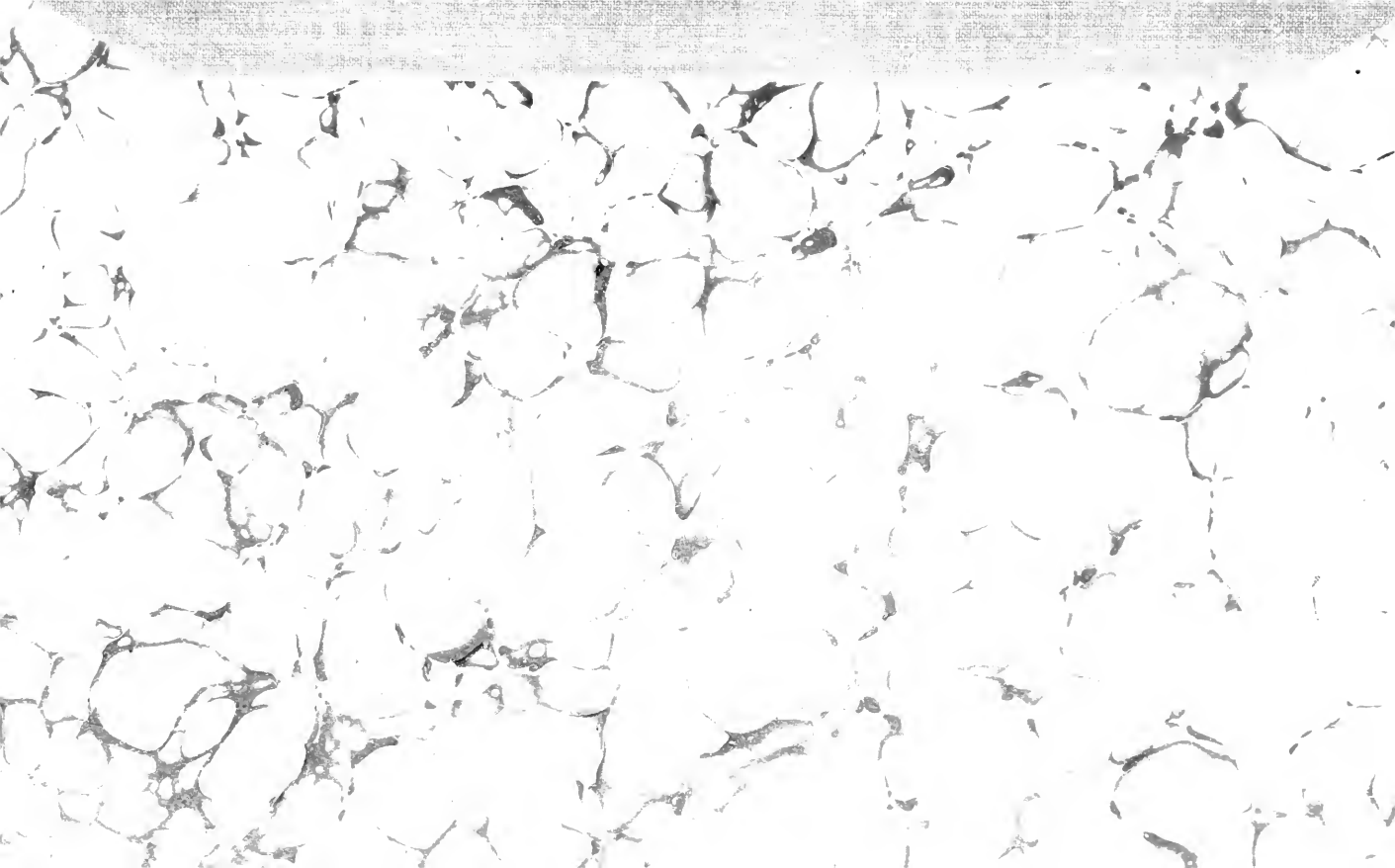
Hints



HINTS,

BY WAY OF WARNING,

ON THE

LEGAL, PRACTICAL, AND MERCANTILE DIFFICULTIES, ATTENDING THE FOUNDATION AND MANAGEMENT

OF

JOINT STOCK BANKS;

BY GEORGE FARREN,

Resident Director of the Asylum Foreign and Domestic Life Assurance Company.

"Never stretch out your arm further than you can conveniently draw it back again." *Nicol Jarvie.*

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REMARKS, &c.

THE recent discussions on the renewal of the Bank Charter have called forth opinions from eminent Lawyers favorable to the legal right of an unlimited number of Capitalists to establish partnership deposit Banks, in the cities of London and Westminster. These opinions, (giving to them for the moment, all the weight of judicial decisions), go no further than to determine that Joint Stock Banks for deposits, may be established without infringement of the privileges secured to the Bank of England; and if the same legal authorities were consulted as to the means by which a numerous body of partners in banking, can, without being incorporated, protect themselves and the public, in the advantages which an honest employment of Capital might seem to promise, the opinions would at once proclaim the utter impracticability of such a scheme.

It may be desirable in the first instance, to direct attention to the course of banking generally; confining the enquiry to its rise and progress in England, without going back to Joseph, the collector of the precious metals, for the first private banker; or to the year 1200, for the first National Bank, founded in Venice, under the title of the Chamber of Loans.

Private banking was commenced in England by Mr. Francis Child, in Fleet Street, in 1645. Soon after which, Messrs. Snow & Dean opened another Bank in the Strand. Those Establishments continue on the very spots where they commenced business nearly two-hundred years ago; unshaken monuments of the prudence and integrity of their Conductors: and London and Westminster may justly boast of their two original Banks, still in friendly emulation, within a few yards of each other, and of the bar which separates the precincts of the cities. These are instances enough to show, that private Banks may be formed on the surest foundation, with security to the partners, and advantage to the public: nor would fifty cases of failure among bankers, do more than prove the improvidence with which the particular Establishments had been conducted.

It was not until the above named houses had flourished for upwards of forty years, that any public bank was known in England. In 1694, the Bank of England, originating in a loan to Government, was established by an Act 5th & 6th William & Mary.

Two years after, further subscriptions were raised, and it was enacted, "that no other Bank, nor any other corporation, fellowship, nor constitution in the nature of a Bank, shall be erected, established, permitted, suffered, countenanced, nor allowed by Act of Parliament within this kingdom."

The first years of the Bank of England were not very prosperous. The 6th Anne (A. D. 1707), however, did the Company important service, for after reciting that great numbers of persons had, by pretence of Deeds and Covenants, united together, and presumed to borrow great sums of money, and to deal as a Bank, it enacts—" that, from the 29th of September, 1708, and during the continuance of the Bank of England, no company united in partnership, exceeding six in number, shall take up on their bills, payable under six months."

The passing of this last statute, shows conclusively, that the Act of William & Mary was construed to mean, that no other than the

Bank of England should be established, countenanced, nor allowed *by Act of Parliament*, within the kingdom; but, that if Banks could be carried on without the aid of an Act of Parliament, Capitalists were permitted, by the common law of the land, to combine for that purpose. The 6th of Anne, however, put the matter beyond doubt, by prohibiting any company exceeding six in number united in partnership, from *taking up on their bills*, payable under six months; thus, clearly drawing a line of distinction between mere *deposit* Banks and Banks of *issue*.

Smollett tells us, the "scheme of the Bank of England was founded on the notion of a transferable fund, and a circulation, by bills, on the credit of a large capital. Forty merchants subscribed to the amount of £500,000 as a fund of ready money, to circulate one million at 8 per cent. to be lent to the Government; and even this fund of raised money bore the same interest. When it was properly digested in the Cabinet, and a majority of interest secured for its reception, the undertakers for the contract introduced it into the House of Commons, and expatiated upon the national advantages that would arise from such a measure. They said, it would rescue the nation out of the hands of extortioners and

usurers, lower interest, raise the value of land, revive and establish public credit, extend circulation, consequently improve commerce, facilitate the annual supplies, and connect the people more closely with Government. The project was violently opposed by a strong party, who affirmed, that it would become a monopoly, and endanger the whole money of the Kingdom; that, in as much as it must infallibly be subservient to Government views, it might be employed to the worst purposes of arbitrary power; that instead of assisting it would weaken commerce, by tempting persons to withdraw their money from trade, and employ it in stock-jobbing; that it would produce a swarm of brokers and jobbers to prey upon their fellow creatures; encourage fraud and gambling, and further corrupt the morals of the nation." Notwithstanding this, the bill made its way through the two Houses, establishing the funds for the security and advantage of subscribers.

It may appear tedious to dwell on the events of that period; but the dissemination, at the present time, of opinions which may be falsely construed to recommend the adoption of Joint Stock Banks, whilst they only mean to declare that such Companies are not absolutely prohibited by Statute, renders it necessary to

point public attention to the objections urged upwards of a century ago, against the establishment of a National Bank, having the advantages of being incorporated and encouraged by the Government itself.

Any Joint Stock Banks of deposit, in London or its vicinity, will not only be without the powerful aids by which the Bank of England has thriven, but will positively be opposed to the Government Bank.

The particular object of the present observations is to direct attention to the legal difficulties and various inconveniences attending the formation and working of an unchartered Banking Company, consisting of a great number of partners.

The Attorney and Solicitor Generals of the present day, in their recent opinions to the Chancellor of the Exchequer, state, "we must premise that the common law knows no distinction between Joint Stock Companies and any other partnerships;" and add, "the circumstance of no Joint Stock Bank of deposit being hitherto established in London, may probably have arisen from the difficulty of carrying on such a concern beneficially, without a power to accept bills of exchange at a shorter date than six months, and, still more, without a power of suing and being sued in

the name of one of its officers. No other corporation than the Bank of England could have acted as a bank of deposit, for there is no other corporation created by charter or Act of Parliament for the purpose of banking, in any of its branches; and a corporation could not lawfully engage in banking if created for a different purpose."

If the officers of the Crown had confined their remarks to the law of the case, without speculating on the probable reasons for no Joint Stock Bank of deposit having been hitherto established in London, their opinions would have been the more entitled to respect; and if they had proceeded to point out the legal impediments by which the carrying on such a concern must necessarily be obstructed, they would have served the public much more essentially. The distinction, between a company having "a power of suing and being sued in the name of one of its officers," and a Corporate body, is certainly glanced at in the opinion, but the points of difference are not explained, so that a casual reader would scarcely think the distinction material. On this point reference may be made to the judgments of the greatest legal authority that ever presided in the English Courts—Lord Chancellor Eldon.

In Davis v. Fisk, his Lordship, after saying that it had been determined, that a dozen persons may guarantee each other in partnership, added, "when once it was established "that twelve might act on such a principle, it "was impossible to put a limit to the number; "and it is said, from the Bar, that sixty "thousand have combined for that purpose in "the present instance. The inconvenience of "administering justice to such a mass of people, "all standing in the relation of partners, was "soon discovered, for, as partners, they were "bound to set forth the names of all their body "when acting against a stranger, and it was "equally incumbent on those who prosecuted "claims against them, to bring all before the court "To obviate this difficulty, it has frequently "happened, that Acts of Parliament have been "obtained, by which the Secretary, Treasurer, "or some officer of the Society, is pointed out "as a nominal Plaintiff or Defendant, to sue or "be sued, for or on account of the Association "at large; and so far such an Association may "be called a *quasi* corporation,—having the "power, emblems, and, to a given extent, the "privileges of a body, without having been "incorporated. I shall be very cautious not to "extend those privileges. The policy of Acts "of Parliament, in such cases, was to render

" facility to justice, by making one person
" to represent a mass, which would of itself
" be immoveable; but, the difficulties, as I
" foresaw and urged in my place in the House
" of Lords, were not so easily to be overcome;
" for, although justice might be done in cases in
" which the Association was *complaining*, by
" the use of one name instead of sixty thou-
" sand, the same measure of justice could not
" be rendered in the person of one *Defendant*.
" The Secretary or Treasurer might not be
" worth the money for which he was sued,
" and the funds might be insufficient. But, sup-
" posing the officer to be in possession of ample
" means, execution would go against him or
" his effects, and, having paid the money, he
" would have to seek just contribution from
" the Members, which might be practicable
" with a manageable number, but, which must
" be next to impossible with sixty thousand
" persons. The Acts of Parliament do not con-
" template suits amongst the Members them-
" selves, but speak only of actions by & against
" them. The present record, therefore, derives
" no assistance from the Act, as it not only pre-
" sents Members complaining of each other,
" but states that which is false, (I do not use the
" word 'false' in its offensive sense, but merely
" as describing an assertion which is not strictly

" true), for it represents the Bill as filed in be-
" half of all the Members, whereas the Defend-
" ants appear to be Members also. In certain
" cases of covenant, where it is necessary to
" bring all parties before the Court, those who
" refuse to be Plaintiffs must be made Defend-
" ants, but a man cannot stand as Plaintiff and
" Defendant at the same time; and, for any
" thing that appears on this record, there may
" be one half of the Members represented by
" the Plaintiffs, and the other by the Defend-
" ants, though all are called Plaintiffs."

" The present case is reduced to a mere
" matter of partnership; and (as I threw out in
" the course of the argument) can it be said that
" a man does not know his own partners, nor
" the nature of the concern of which he is a
" member? I do not say that this record may
" not be so amended as to bring all parties
" properly before me, but I feel that it is very
" difficult to do so with 60,000 partners."

In the Acts of Parliament granted to several of the life offices, and other Joint Stock Companies, the Legislature has caused the following provisions to be inserted, viz., " that
" execution upon any judgment in any such
" action obtained against the person acting
" as Chairman of the Society or partnership
" for the time being, or against the person

" acting as Secretary of the Society or part-
" nership for the time being, whether as
" plaintiff or defendant, may be issued against
" any Member or Members for the time being
" of the Society or partnership: provided al-
" ways that every such Chairman or Secretary
" in whose name any such action or suit shall
" be commenced, prosecuted or defended, and
" every such Member or Members against
" whom execution upon any judgment obtained
" in any such action, shall be issued as afore-
" said, shall always be reimbursed and paid,
" out of the funds of the Society or partner-
" ship, all such costs and charges as by the
" event of any such proceedings, he or they
" shall be put unto or become chargeable
" with."

" That a memorial of the names of the
" several persons being Members of the So-
" ciety or partnership, in the form expressed
" in the Schedule annexed, shall be enrolled
" upon oath in the High Court of Chancery,
" within three months after the passing of the
" Act; and when any transfer of any share or
" shares of any Member of the Society or
" partnership shall be made, a memorial
" thereof shall in like manner be enrolled as
" aforesaid, in the form and to the effect ex-
" pressed in the said Schedule."

"That until such memorial as before men-
"tioned shall have been enrolled in the
"manner herein directed, no action shall be
"brought by the Society or partnership under
"the authority of the Act; and all the Mem-
"bers whose names shall be expressed in the
"last enrolment, shall continue liable to all
"actions, suits, judgments, and executions,
"until a memorial or memorials of transfer
"shall have been enrolled as aforesaid."

"That nothing in the Act contained shall
"extend or be deemed, construed, or taken to
"extend, to incorporate the Society or part-
"nership, or to relieve or discharge the So-
"ciety or partnership, or any of the Members
"thereof, or Subscribers thereto, from any
"contract, duty, obligation, or responsibility
"whatsoever, which by law they now are, or
"at any time hereafter may be subject or
"liable to, either as between such Society or
"partnership and others, or among themselves
"or in any manner whatsoever." (Vide stat. 54, Geo. III. cap 79, sec. 2, 3, 4, and 7.)

These clauses involve considerations of vast and serious importance to all who might desire to hold shares in a Joint Stock Bank.

The Shareholder, at the time he pays his deposits on the formation of the Company, and enters his name for the number of shares

for which he subscribes, is in most instances absolutely assured, by the Deed of Settlement or Foundation, that his responsibility is to be limited to the amount of those shares. But, by the operation of the Act of Parliament, he suddenly finds himself made responsible for the full amount of the engagements of the Institution. It would be useless for him to urge to the holders of writs of execution, that, the *Deed* to which he subscribed expressly declared a limit to his responsibility. The answer would be (if the holder should deign to give an answer at all), "The Act of Parliament, Sir, declares you liable: the bargain between you and your Co-Shareholders cannot affect the rights of other persons. This is declared to be a public Act, and every man (strictly speaking) is bound to take notice of its provisions; but your name is actually enrolled, on oath, as one of the persons against whom execution is to issue on judgments recovered. You, therefore, are not, or ought not to be ignorant of the consequences."

The inconvenience and disquietude, which a man would labour under, if he were aware of such responsibility attaching to him, cannot be adequately described; and it would be difficult to fix a limit to resulting consequences.

Engaged in his ordinary pursuits, and having invested a sum under promises of superior advantage, he would not look to that investment as a source from which danger might spring.—Not being permitted to have a voice in the management of the Institution, he might learn for the first time, from a newspaper report of a trial at law, that the Bank of which he is a Shareholder had been in litigation. Little could he fancy at the moment, that, if satisfaction of the judgment should be delayed, either by the want of funds, or by the contumacy of those who control them, the very bed on which he slept might be seized on for the amount; nay, that the knocker at his hall-door might shortly announce the arrival of the holder of a writ of execution, by which his person must be imprisoned if the money should not be paid.

Once aware of the existence of this danger, a man's first wish might be to avoid it, by disposing of his shares, but, if he had been informed of his situation by means which were open to all, he might find it very difficult to meet with a person who would take his bargain even as a gift: and the Act of Parliament is imperative, that all the Members, whose names shall be expressed in the last enrol-

ment, shall continue liable until a memorial of transfer shall have been enrolled.

These observations proceed on a supposition that the Deposit Bank had obtained an Act granting, "a power of suing and being sued, in the name of one of its officers:" without such power, simple contract transactions, with a numerous proprietory, could scarcely be conducted at all. It is perfectly clear, that in the present day, no such company would obtain a charter, or be incorporated.

To illustrate legal impediments by familiar examples,—suppose a proprietor, holding shares, by which he is constituted a partner, also paying in money to the Bank as a Customer. How could he withdraw his deposit? Or rather, how could he enforce its payment if with-held from him? He could not sue his partners at *law*, and the difficulties of bringing the proper parties before a Court of *Equity*, have already been represented in the judgment of Lord Eldon, in Davis v. Fisk. "The Acts of Parliament," said his Lordship "do not contemplate suits among the Members themselves, but, speak only of actions by and against them."

Suppose the case of an ordinary Customer of the Deposit Bank, not being a partner, how could he proceed if his deposits were witheld?

He might sue the officer named in the Act, as the nominal Defendant! But, would that officer have the funds of the Company, in his actual possession, or under his single controul, so as to be able to pay all the Company's engagements? It is to be hoped not—or else the whole property of the bank would be in the power of a single individual, who might walk off with, or misapply the funds at his own pleasure: of what use then would a judgment against a nominal defendant be to a Customer if the funds were adversely witheld? Why he might take out execution against any member or members for the time being, of the Society or Partnership. This remedy in a few instances, might be effectual, but would it be so to the extent of the whole engagements of the Bank? Is it certain that the private property of the proprietors, would be sufficient to meet all public claims on the partnership? It is perfectly certain, that the private property of every proprietor would be liable to the last farthing, but that property might not be equal to the claims of the customers, who would have no means of getting at the Company's Fund, except through the intervention of a Court of Equity; as it must be remembered, that the *subscribed fund* and other accumulations would be invested in the names of Trustees.

So far consideration has been confined to the cases of *Customers:* turning now to the rights and remedies of the Partners among themselves, how would they be affected ?—One man whose private property may have been seized in execution, must seek as *Claimant* pro rata contribution from several thousand partners, with the probability of being himself made a *debtor* the next hour, at the suit of some other proprietor, who may also have been levied on for a judgment against the officer, sued under the Act. If the whole of the trading capital should not have been paid up, how would further instalments be enforced, or how would the partner who did pay up, obtain just contribution from those who did not ?

It would be tedious to adduce further instances in proof of the utter impracticability of securing to the public and the proprietors, legal and proper remedies against wrong doing, under such a state of things. It is difficult to suppose that any parties would knowingly or wilfully involve themselves in such a labyrinth of legal difficulties, and those who became partners or customers, without previous knowledge of their responsibility might possibly soon be reduced to a state bordering on distraction, from the dispondency consequent on the disappointment of their hopes.

The legal difficulties of the subject having been treated of, it may be well to offer a few suggestions on the practical inconveniences inseparable from the working of such establishments.

Mr. Watt, "Manager and Secretary of the Huddersfield Banking Company, and formerly of the Perth and Arbroath Banks," in his recent publication on banking in Scotland and England, says—

"As some Banks are now attempted to be established on a rather different foundation, I would venture to observe, that, Banking Companies are not formed upon a correct principle, are not safe as regards the public, and are not sound as being the furnishers of a paper circulation in notes and bills, if they carry on the banking business with a small paid up capital, with the view merely of realizing a high per centage as a dividend. A Bank ought to *possess money of its own*, or it is not entitled to the name of a bank, even, although many respectable Merchants may be Shareholders; because, when a time of pressure comes on a bank, it comes at the same time on the mercantile part of the community, and to a call on the Shareholders, to pay up additional capital at such a time, the answer would be "that it was not a convenient season."

"The Legislature had in view, by the Act of 7th George IV. to establish in England, a secure and sound system of banking; but, if the principle is admitted, and allowed to operate throughout the country, that banking companies can be established *on credit*, with small paid up capitals, or with no paid up capital at all, for the purpose of realizing a *high per centage* as a dividend, and, thus encouraging speculation in shares, then banks of this description will spring up in every district in England, (which they are partly doing at present), and in their consequences, will be productive of far greater evil than ever attended private banks. They will be set a going by speculators; a great per centage as a dividend will be announced, partly arising from profits in business, and partly from premiums on Shares; and when the concern is thus puffed up, the framers of it will sell out at a large profit. One individual sold out of a Banking Company, not four years in existence, with the direction of which he was concerned, and cleared ten thousand pounds; and soon after he sold out, the Bank found itself in possession of *bad debts* to as great an amount as its paid up capital!"

"The principal evil to the trade of the Country will be in the system of competition. Of

over trading and all its injurious consequences which will inevitably be engendered by *credit Banks* being established, and carrying on business with small paid up capitals, and re-discounting their bills."

"It has been already stated that a large and sufficient paid up capital should be made a *sine qua non* in the formation of Banking Companies in England. The prodigious extent of business done, and the great variety which obtains in the doing of that business, would establish the importance of that principle; but it would appear to be necessary even in Scotland, where the business is much more limited, and where the mode of doing that business is very uniform. Within these few years, three Banking Companies have been wound up in Scotland, with great loss to the Shareholders; and it is remarkable they all had small paid up capitals,—two of them so small that it appears a sort of humbug to have given them the name of Banks; and had the amount of their capitals been published, they never could have obtained the credit in that country which they did.

"The East Lothian Banking Company, at Dunbar, consisting of 400 shares of £200 each, with a paid up capital of £40,000

"The Montrose Banking Company, consisting of 150 shares of £100 each, with a paid up capital of..... £15,000

"The Fife Banking Company, consisting of 60 shares of £500 each, with a paid up capital of £15,000

"The paid up capitals on each were lost; and the Shareholders of the Dunbar Bank had to pay £475 on each share, to meet engagements and bad debts. The Shareholders of the Montrose Bank had to pay £150 on each share, and £50 more will be required to pay off all obligations; and, the Shareholders of the Fife Banking Company had to pay £2,500 on each share, to pay off all the obligations and bad debts of the bank. Dishonesty and mis-management were partly the causes of the losses made by the Dunbar and Fife Banks; and the losses of the Montrose Bank were principally caused by bad debts made at its branches. In fact the Company was ruined by its branch banks."

"Now, in the working of the Joint Stock Bank System, the evil which experience has shown ought to be guarded against, is, the allowing parties to subscribe for ten, twenty, or even fifty times more than they are ever able to pay for."

"The Shares in banking Companies, are called, £100 Shares, but the framers of some of

them say to parties subscribing, that not more than £5 on each Share will ever be called for, and persons subscribe for their 50, 100, or 1,000 Shares, pledging themselves in a Deed of Settlement, to pay up £100 on each Share, when demanded; whereas, it is notorious that they could as soon pay off the National Debt, as pay the sums to which they have subscribed their names."

"There is, therefore, a complete deception practised on the subject, but it answers the purpose of the framers of these Companies, by enabling them to announce in the newspapers, &c. "Capital half a million, or one million sterling!" &c.; whereas, the *bona fide* Capital is perhaps £15,000 or £20,000 only."

"It is altogether a delusion to consider any sum as the capital of a bank, but what has actually been paid up by the Shareholders."

"This *paid up capital* ought to be published, and all publications of merely "subscribed capital" prohibited, so as not to deceive the public."

"By such delusions some Banking Companies obtain a great circulation, both of notes and bills, and make the public believe that they are based upon a vast capital, when, in reality, no capital as a ground of security exists at all."

"It may be thought that prudential considerations would operate against Shareholders continuing such a system, but it has been found that the cupidity of individuals is sufficient to outweigh all other considerations. In several of the publications on banking and currency, it has been strongly recommended as a correction of the evils of the system that a publication of the accounts, &c. of Banks, should be ordered by the Legislature. I do not think that any publication of the accounts of the Country Banks, would be of the least use in preventing the abuses complained of."

These are the opinions of a practical man, perfectly conversant with the working of such institutions, both in Scotland and England.

That a Deposit Bank, founded on only a small money subscription aided by the signatures of respectable persons to deeds of covenant, would not be successful, will scarcely be doubted when it is borne in mind, that the most wealthy banking concerns,—nay, that the Bank of England itself, make but slender profits from the employment of their very extensive means as pure Bankers.

The Bank of England—a National Establishment of upwards of 100 years standing—having the management of the Government

concerns, and incorporated with reserved and peculiar privileges, divides but 2 per cent. per annum, as the result of its profits as private Bankers. This fact is shown by deducting from the dividends declared, the amount of interest, according to the rate of the funds which the capital actually accumulated would produce, increased by the amount which the arrangement with Government annually gives to the Company.

Whilst usury laws exist banking must be less profitable than the lowest business in the catalogue of trades. This assertion may at first startle the reader, but if he reflect for a while he will admit its truth. Suppose a meeting of the Creditors of an insolvent Debtor to consist of six persons, five of whom are men in trade and the sixth a banker, each a Creditor for £100,—how is the debt of each made up? Why, in five of the instances the Creditor has expended £85 in goods sold to the Insolvent for £100, whereas the Banker, by permitting an over draft, has advanced the whole of the £100 in cash. Now, if the Insolvent's estate should realize 86 per cent. of his debts, the five traders would make a profit of £1 each, whilst the banker would sustain a loss of £14 by his transaction. The truth is, that in a calculation of interest of money, re-

gulated as it is, the *principal* is never supposed to be in jeopardy; whereas, in merchandize, profit or loss on goods purchased and sold are fairly matters of speculation. It may serve as a plausible inducement to those who have a super-abundance of money which cannot be invested at a greater interest than the funds will yield, that many Joint Stock Banks are now in prosperous existence, in places remote from the Metropolis. But let the covetous man remember that the duration of those banks has not been sufficiently long to prove their stability, because no period of panic has occurred since their foundation; and let him also enquire whether the supposed profits have not sprung from transactions as Agent (commissions on advices, &c. &c.) rather than in character of pure Banker.

It is not in this respect only that Deposit Banks in London would differ from the Banks of issue in the Country. If the former should be established as Joint Stock Companies, will the Proprietory be content to leave their contributed thousands to the management of any Board of Directors, without the useful check of quarterly or annual investigation by Auditors? And if there be Auditors, must they not report to the Proprietory at large, consisting probably (as in Davis v. Fisk),

of 60,000 persons? Will any Customer of respectability condescend to have his banking account, which is very often the index to, or measure of, his mercantile transactions overhauled, discussed, and proclaimed by so vast a number of persons? Nay, further, will he, if he be a Proprietor as well as a Customer, incur the risk of those transactions, (originating in sources from which he derives his mercantile existence), being dragged into the office of a Master in chancery, in case of disagreement or litigation between partners and customers, or amongst partners themselves? Will he, if he be a person of known wealth, record his name in the Court of Chancery as the first object to be aimed at for satisfaction of judgments which may be recovered against the Bank? These are not merely imaginary difficulties, they have actually occurred over and over again.

One instance of gross malversation, to say nothing of the many of mis-management, has already been recorded by Mr. Watt, in his publication before quoted; and he is the manager and secretary of a Joint Stock Bank. To this case, another, still more in point, might be added; but, let it merely be *supposed* that the Directors had lent money to one of their own Board; how can the law

be applied to make him refund? Could they sue him at law? No. Could they proceed in equity? No,—for Lord Eldon has declared that ALL the partners must be made either Plaintiffs or Defendants, so that all must be consulted: and even though the consent of all *existing* proprietors should be obtained, still the death almost daily of some one or other of so numerous a body, would inevitably create the necessity of frequent abatements or amendments of the suit, so as to render a continuous course of legal proceeding utterly impossible.

By way of contrasting the facilities now granted by private bankers to their Customers, with the course which might be adopted by a Joint Stock Banker,—suppose a respectable Merchant now wanting £5000 for a particular operation; he goes to his banker, where he meets one or more of six partners, *all having the same views and interest.* To them he explains his object, and gets the money. The communication of his intentions is *confidential:* the banker judges for himself of the plausibility of the statement, and has no possible inducement to betray his Customer, or to prejudice the transaction which he is called on to promote by an advance of money. Would the Customer feel equally certain as to his reception by one or more of the Directors of

a joint Stock Bank? Might not some of the Directors be Merchants themselves? Nay, Merchants in the very trade in which the sanguine Customer hoped by promptness to reap the advantages of a well conceived speculation! Would he feel equally sure that his confidence would be held sacred by twelve or twenty-four gentlemen, each having distinct views and interests of paramount consideration to the emoluments he might reap from his Office of Director of a Joint Stock Bank? Might not the Customer feel that the mere communication of his intentions to men who were themselves in trade would be dangerous to his speculation, and form an inducement to his being *refused* rather than being granted the aid he sought? Even if he should succeed in obtaining the money and not be anticipated in his mercantile operation, would he like to have his transactions and borrowings published to all the world, through the statements rendered to the numerous Proprietors of the Bank.

Even at the Bank of England, where loans without a certain sort of security cannot be obtained, and where mercantile speculations could not be listened to, even there, are not applications for advances (out of the usual course of discount), pretty generally published within a short time of their being made? Is

it not said abroad, "a certain house has applied to the bank for assistance!" And did any house ever sustain such report uninjured? The very main spring of banking is confidence and secrecy, which cannot be calculated on in transactions with a Joint Stock Bank.

These are considerations which ought to operate strongly on the minds of mercantile men and capitalists; but there is another of vast importance which has not yet been treated of. Would the Bank of England and the private Banks, quietly submit to rivalry from Joint Stock Bankers in London? Is it not notorious that the Bank of England could by sale of exchequer bills, or otherwise, withdraw nearly altogether their notes from circulation in London? Is it not equally clear, that they, as a Bank of issue, could grant facilities far beyond the power of a mere unincorporated Bank of Deposit? Would they, *ought* they, in justice to their proprietory and to the Government, to permit repeated acts of aggression against them, without severe retaliation? And will men of ordinary prudence enter into so frightful a competition, knowing that their powerful rival can, not only create money for itself, but might in case of need, repeat to Government the language used to Mr. Pitt, in 1797. "How far may the Bank

go, on paying their notes *in cash*, and when will it be necessary for Government to interfere, before their cash shall be so reduced as to be detrimental to the immediate service of the state?" The result of such a representation after the Bank of England had been assailed by a variety of Joint Stock Banks, cannot at this moment be speculated on. Nor should it be forgotten, that in the lately renewed Charter, Bank of England notes are made a legal tender.

What then might be the results springing from the establishment of Joint Stock Banks in London?

To the Proprietors—loss, and endless squabbles among themselves.

To the Customers—uncertainty, want of facility, apprehensions of abused confidence.

To the Bank of England—*ultimately* great gain from a variety of sources, amongst others, probably a large increase of private accounts; for if any *wealthy* men withdrew their balances from private bankers to carry them to the Joint Stock Bank, on a disappointment in the concerns of the latter, the

pride of the Customer would not permit him to return to Lombard Street, and he would go to the Bank of England. The *needy* man, who had withdrawn his account, might go where he could, for the Bank of England would grant him no facilities, and the private banker would not again be troubled with him after his unsuccessful experiment at the Joint Stock Bank.

To THE MERCANTILE WORLD GENERALLY—agitation, speculation, litigation! any thing but reparation or consolation.

FINIS.